

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 07-00977

ORDER DISMISSING CASE

The relief set forth on the following pages, for a total of 7 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
06/06/2007



Entered: 06/06/2007


US Bankruptcy Court Judge
District of South Carolina

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Bobby Cooley,

Debtor.

C/A No. 07-00977-DD

Chapter 13

ORDER DISMISSING CASE

This matter came before the Court for hearing on the confirmation of the debtor's chapter 13 plan and objections thereto and on the motion of the chapter 13 trustee to dismiss this case pursuant to 11 U.S.C. § 1307(c) with prejudice. The debtor appeared at the hearing along with counsel. After careful consideration of the testimony and record in this case, the Court enters the following order:

FINDINGS OF FACT

1. The debtor filed for relief under chapter 13 of the Bankruptcy Code on February 27, 2007. Joy S. Goodwin was appointed as chapter 13 trustee.
2. The first meeting of creditors was held on April 5, 2007 pursuant to 11 U.S.C. § 341. The debtor testified at the § 341 meeting that he had reviewed his schedules and that they were correct and he had listed all assets. However, his ex-wife also attended the meeting and questioned the debtor about omitted assets. As a result of her questions, the debtor testified that he had 13 to 15 porta-johns worth \$200 each. No porta-johns were listed on his schedules.
3. The debtor testified at the hearing on the trustee's motion on May 14, 2007 that he had been mistaken during his § 341 testimony about the number and the value of the porta-johns. He testified that he actually owned only 8 porta-johns and that they were worth about \$800 to \$900 total. He testified that they were used and sitting in a field, that

he was no longer able to rent them out and had not received any income from them in over a year. He stated that he could not rent them because he did not have the working equipment necessary to clean them and put them into service.

4. The debtor previously filed for bankruptcy relief in February 7, 2005, Case Number 05-01438-wb. That case was dismissed on July 11, 2005 for non-payment. Ms. Goodwin was chapter 13 trustee in that case. The debtor included 6 porta-johns valued at a total of \$600 on his schedules in that case.

5. The debtor also testified at the § 341 meeting that he owned a pump truck for his septic business. The trustee asserted that it is not listed on his schedules. The debtor testified at the hearing on the motion to dismiss that the pump truck is listed incorrectly on his schedules as a “‘67 Chevrolet C-50 Pickup Truck.” The schedules filed in his prior case list a “1967 Pump Truck.”

6. Regarding additional alleged errors and omissions in the debtor’s schedules, debtor’s Schedule B lists 3 trucks: a 1978 Ford F150 Pickup with 190,000 miles valued by the debtor at \$500; a 1967 Chevrolet C-50 Pickup (mentioned above) with 325,000 miles, designated by the debtor as “inoperable” and valued at \$100; and a 1972 Chevrolet C-50 Pickup with 256,000 miles, valued by the debtor at \$400. At the hearing he admitted that he also owned a 1976 Ford F600 which is a dump truck. The estimated value of that vehicle was \$1,100.00. However, it is not listed on his Schedule B. He also testified that he no longer owns the 1972 truck that was listed. He further testified that after he filed his petition, the 1978 truck that was scheduled broke down and, to replace it, he purchased a 1984 Chevrolet truck for \$100 cash.

7. The debtor has not yet amended his schedules to correct these errors.

8. The trustee raised various questions about other potential assets, but there was no evidence of any other significant omission or error in the scheduling of assets on the debtor's schedules.
9. The debtor filed a plan proposing to pay \$155 per month for 60 months, with a proposed payout to general unsecured creditors of 1% of allowed claims.
10. Before the Court on the same date and time as the hearing on the Trustee's Motion to Dismiss with Prejudice was a hearing on the confirmation of the debtor's plan and objections thereto. At the hearing the parties agreed that the debtor's proposed plan subject to approval on that date was not confirmable. The trustee also estimated that to cover the claims in the case the plan payment must increase in an amount that is far more than the debtor can afford given the budget on file with the court.

DISCUSSION AND CONCLUSIONS OF LAW

The trustee contends that the debtor has made a false statement under penalty of perjury and intentionally failed to disclose assets. The trustee seeks dismissal pursuant to 11 U.S.C. § 1307(c) in that debtor's actions reflect bad faith that justifies dismissing the case with prejudice. Section 1307(c) enables the Court to dismiss a case "for cause" and gives a non-exhaustive list of examples of "cause." See In re Harris, No. 06-05030-jw, slip op. at 3 (Bankr. D.S.C. Dec. 23, 2006). Lack of good faith can also be cause for dismissal of a chapter 13 case. See id. and cases cited therein. In addition, the first enumerated ground for "for cause" dismissal is "(1) unreasonable delay by the debtor that is prejudicial to creditors." 11 U.S.C. § 1307(c)(1).

This Court has determined that "[t]he critical time for disclosure is at the time of the filing of a petition and the Debtor has the responsibility to do so. Bankruptcy law

requires debtors to be honest and to take seriously the obligation to disclose all matters.”

Siegel v. Weldon (In re Weldon), 184 B.R. 710, 715 (Bankr. D.S.C. 1995). This Court has further stated:

Since bankruptcy schedules and statements are carefully designed to elicit certain information necessary for the proper administration of cases, Debtors have a duty to complete these documents thoughtfully and thoroughly. See In re Phillips, C/A No. 02-10461, slip op. at 4 (Bankr. D.S.C. Feb. 21, 2003). Furthermore, accuracy, honesty, and full disclosure are critical to the functioning of bankruptcy and are inherent in the bargain for a debtor’s discharge. See id. at 3 (citing Kestell v. Kestell, 99 F.3d 146, 149 (4th Cir. 1996)).

In re Simpson, 306 B.R. 793, 797 (Bankr. D.S.C. 2003). “The court system, trustees, creditors, and other interested parties rely on these schedules and statements in order to make informed decisions, and the importance of accurate schedules cannot be overstated.” In re Phillips, slip op. at 4. “[T]he Court will not be placed in the position of ferreting the truth from inaccurate and misleading information supplied by debtors and their counsel. Neither the UST, the Clerk, nor creditors and parties in interest should be placed at a similar disadvantage.” In re Boland, No. 01-03911-wb, slip op. at 2 (Bankr. D.S.C. May 24, 2001).

The proven omissions and inaccuracies in this matter are as follows: (1) debtor failed to list the porta-johns in his schedules in the current case; (2) he scheduled but misidentified the 1967 truck as a Chevrolet C-50 pickup instead of a pump truck; (3) he did not list on his schedules a 1976 Ford F600 dump truck which he admits owning; (4) he incorrectly included a 1972 Chevrolet C-50 pickup, which he testified he has not owned since prior to the filing of his petition.

As the debtor has failed to list assets of the estate and as a result of the denial of confirmation of his plan, the case is ripe for dismissal pursuant to 11 U.S.C. § 1307(c).

The debtor's conduct of failing to list all assets and failing to confirm a plan have resulted in delay that is unreasonable and prejudicial to creditors, and it appears that a confirmable, feasible plan cannot be proposed. Therefore, the case will be dismissed.

The Court must now turn to the trustee's request to dismiss the case with prejudice for at least one year. While the trustee has proven that the debtor failed to list some assets of the estate and that dismissal is therefore warranted, the debtor testified to miscommunication between the debtor and his attorney and simple inattention to detail in an attempt to explain the omissions. While the debtor omitted certain assets, he also included similar assets that he no longer owns. Further, the assets appear to have very little value to the debtor or the estate. The omitted vehicle is over 30 years old, and the porta-johns are not only used and of little value, but also were disclosed in a prior case filed in the same court and assigned to the same trustee. The debtor's testimony as to their inconsequential value and lack of usefulness, at least to him, was not contradicted by any other evidence.

These factors appear to indicate a lack of an intentional omission on the part of the debtor and rather indicate some level of inappropriate carelessness. The inaccurate schedules and carelessness subject the debtor to dismissal of this case and the prejudices associated therewith found in BAPCPA¹ for repeat filers should he choose to file bankruptcy again. However, the proven facts do not convince the Court that this debtor has participated in the level of bad faith which has resulted in a dismissal with prejudice for one year or longer as in other cases in this Court. See In re Simpson, 306 B.R. 793, 798 (Bankr. D.S.C. 2003) (scheme to conceal material and significant asset and

¹ See 11 U.S.C. § 362(c)(3) and (4) which were added to the Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA").

undervalue interest in properties results in dismissal with 18-month prejudice period); In re Harvin, No. 05-13911-hb, slip op. at 7 (Bankr. D.S.C. May 11, 2006) (omission of interest in real estate and other numerous omissions in schedules result in dismissal with prejudice for one year). See also In re Moroney, 330 B.R. 527, 533 (Bankr. E.D. Va. 2005) (“In determining whether a chapter 13 case should be dismissed with prejudice, the court should consider whether the debtor acted in good faith.”). The Court is, however, convinced that as this is the debtor’s second case in a short period of time, and further, given his inconsistencies, inaccuracies and omissions in the schedules which demonstrate a lack of diligence and good faith in carrying out his responsibilities herein, dismissal with prejudice for 180 days as to any reorganization chapter is warranted to prevent further delay and prejudice to creditors in this matter.

It is therefore ORDERED that confirmation of the plan is DENIED and this case is DISMISSED pursuant to 11 U.S.C. § 1307(c). The debtor is hereby prohibited from filing an additional case under chapters 11, 12 or 13 for a period of 180 days from entry of this order.